

SETTLEMENT AGREEMENT

AMONG  
AVISTA CORPORATION  
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY  
IDAHO DEPARTMENT OF FISH AND GAME

CONCERNING THE RELICENSING OF THE  
POST FALLS HYDROELECTRIC PROJECT  
FERC PROJECT NO. 12606

# Post Falls Project Settlement Agreement

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## APPENDIX

- Appendix A Draft Post Falls Project 401 Certification Conditions
- Appendix B Authorized Representatives of the Parties

## Post Falls Settlement Agreement

### PARTIES TO THE AGREEMENT

This Settlement Agreement (“Agreement”) is made as of the day that the last Party identified in this paragraph executes the Agreement (“Effective Date”) pursuant to Federal Energy Regulatory Commission (“FERC”) Rule 602, 18 C.F.R. § 385.602, by and among Avista Corporation (“Avista”), a Washington corporation; the Idaho Department of Environmental Quality (“IDEQ”); and the Idaho Department of Fish and Game (“IDFG”); each referred to individually as a “Party” and collectively as the “Parties.” IDEQ and IDFG are also each a “Governmental Party” and are sometimes referred to collectively as the “Governmental Parties.”

### RECITALS

A. Avista is the licensee for the Spokane River Hydroelectric Project No. 2545. The project currently includes the Post Falls Development (“Project”). The Project is located on the Spokane River and includes waters in Kootenai and Benewah Counties, Idaho. The Project generates approximately 9 megawatts of electricity annually.

B. The FERC license for Project No. 2545 expired on August 1, 2007 and FERC issued an annual license for such project.

C. On July 28, 2005, Avista submitted to FERC an application for New License for the Project (designated Project No. 12606) and an application for New License for the other developments of Project No. 2545.

D. The Parties believe it is in their interest to resolve licensing issues through a negotiated settlement agreement. This Agreement sets forth the agreement of the Parties with regard to Project impacts on aquatic resources and water quality, and the measures which Avista will undertake (“Protection, Mitigation and Enhancement Measures” or “PM&Es” or “401 conditions”) in consultation with the Parties upon issuance and during the term of the New License for the Project. This Agreement also establishes the obligations of the Parties to support this Agreement before FERC and to support the issuance of a New License for the Project which is consistent with the terms of this Agreement.

NOW, THEREFORE, in consideration of their mutual covenants in this Agreement, the Parties agree as follows:

### DEFINITIONS

“401 Certification” is defined in Section 1.1.3 below.

“Agreement” means the entirety of this Agreement including Appendices A and B hereto.

“Collaboration and Dispute Resolution Process,” refers to the dispute resolution process set forth in Section 4 below.

“Clean Water Act” or “CWA” means the federal statute set forth at 33 U.S.C. §§ 1251-1387.

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“Consensus” means that all representatives who are present at a meeting of the Parties are in unanimous agreement that a particular decision is acceptable.

“Consistent” means measures which do not conflict with, add to or subtract from the PM&Es and other commitments made in this Agreement.

“Effective Date” is defined in the first paragraph of this Agreement, entitled “Parties to the Agreement.”

“Endangered Species Act” or “ESA” means the federal statute set forth at 16 U.S.C. §§ 1531-1544.

“Federal Energy Regulatory Commission,” “the Commission” or “FERC” is the federal agency responsible for the regulation and licensing of hydroelectric power projects that are not federally owned.

“Federal Power Act” or “FPA” means the federal statute set forth at 16 U.S.C. §§ 791a-828c.

“Final Terms and Conditions” refers, individually and collectively, to the terms, conditions, and recommendations filed with FERC by the Governmental Parties in final or modified form after the Effective Date, including recommendations filed under sections 10(a) or 10(j) of the FPA and terms of the 401 Certification for the Project issued by IDEQ. Final Terms and Conditions are distinct from any terms, conditions, and recommendations which may have been filed by the Parties prior to the Effective Date.

“Gross Domestic Product Implicit Price Deflator” or “GDP-IDP” is defined in Section 5.3.7.

“Inconsistent” means measures which conflict with, add to, or subtract from the PM&Es and other commitments made in this Agreement, including measures which would require modification of the FERC Project Boundary (defined below).

“License Term” and “Term of the New License” refer to the New License (as defined below), including any annual licenses issued by FERC.

“New License” means the new license for the Project issued by FERC under the FPA, 16 U.S.C. § 808 in response to Avista’s July 28, 2005 application(s).

“Notice” is defined in Section 6.8.

“Permits” is defined in Section 2.2.

“Project Boundary” refers to the boundary of the Project as described by Avista in its application for New License for the Project.

“Project” is defined in Recital A.

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“Protection, Mitigation, and Enhancement Measures” or “PM&E Measures” or “PM&Es” are defined in Recital D and are contained in Appendix A.

“Relicensing” means the process of applying for and obtaining a New License from FERC for the Project.

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### SECTION 1:

#### PURPOSE AND EFFECT OF THIS AGREEMENT

1.1 Purpose of Agreement. The Parties have entered into this Agreement to resolve all issues related to Project impacts on aquatic resources and water quality for the purpose of obtaining a FERC order issuing Avista a New License for the Project. For this purpose, the Parties agree that this Agreement is fair and reasonable and in the public interest within the meaning of FERC Rule 602 governing offers of settlement. 18 C.F.R. § 385.602(g)(3). The Parties will request that FERC accept and incorporate, without material modification, as license articles in the New License, all of the conditions set forth in Appendix A to this Agreement. The Parties will request that FERC refrain from including in the New License inconsistent articles, except as may be necessary to enable FERC to ascertain and monitor Avista's compliance with the New License and its rules and regulations under the Federal Power Act ("FPA") and other federal and state laws. Each of the Parties agree that, except as specifically provided below, Avista's performance of its obligations under this Agreement and the Final Terms and Conditions will be consistent with and will fulfill Avista's existing statutory and regulatory obligations as to each Party relating to issuance of a New License for the Project. Without limiting the generality of the preceding sentence, the Parties agree that Avista's performance of its covenants in this Agreement and the Final Terms and Conditions are consistent with and will fulfill all obligations under the following laws, except as provided below:

1.1.1 Section 10(a) of the FPA. Section 10(a) of the FPA requires that FERC consider the recommendations of federal and state agencies and affected Indian tribes in determining whether a project is best adapted to any comprehensive plans for improving or developing the waterway for commerce, water-power development, the protection, mitigation and enhancement of fish and wildlife, and other beneficial public uses. The Governmental Parties agree that any final recommendations under section 10(a) will be consistent with the relevant provisions of this Agreement and that any inconsistency will be resolved in accordance with Sections 4.1 through 4.4 below.

1.1.2 Section 10(j) of the FPA. Section 10(j) of the FPA requires FERC, when issuing a license, to consider and include conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act to "adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)" affected by the Project. IDFG agrees that its Final Terms and Conditions under section 10(j) will be consistent with the relevant provisions of this Agreement and the conditions set forth in Appendix A and that any inconsistency shall be resolved in accordance with Sections 4.1 through 4.4 below.

1.1.3 Water Quality Certification. FERC cannot issue a license for a hydroelectric facility unless the water-quality-certifying agency for the State in which the facility is located has issued a water quality certification for the project or has waived certification ("401 Certification") 33 U.S.C. §1341 (a)(1) [section 401(a)(1)]. IDEQ is the state agency authorized to issue a 401 Certification for the Project pursuant to the CWA and state water quality laws. Idaho Code title 39 chapter 1. Public notice and an opportunity for



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public comment is provided before IDEQ issues a Final 401 Certification. As of the Effective Date, no Final 401 Certification has been issued for the Project. IDEQ intends that the conditions of its Final 401 Certification will be consistent with the conditions contained in Appendix A to the maximum extent practicable and subject to IDEQ's consideration of public comment. Any inconsistency shall be resolved in accordance with Sections 4.1 through 4.4 below. Nothing herein shall be construed as predetermining IDEQ's Final 401 Certification.

1.2 Threatened and Endangered Species. Section 7 of the Endangered Species Act ("ESA") requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species or result in the destruction or adverse modification of critical habitat. IDFG has concluded that the PM&E Measures contained in this Agreement will benefit and improve habitat for bull trout and other native salmonids. Implementation of the PM&E Measures contained in this Agreement is expected to improve conditions for bull trout populations in and adjacent to the Project. For purposes of any consultation under Section 7 of the ESA pertinent to relicensing of the Project, IDFG concludes that projects undertaken as part of the implementation of PM&E Measures set forth in this Agreement will have no negative effect on bull trout and in many instances, will contribute to bull trout recovery in the Spokane River Basin. IDFG will advise the United States Fish and Wildlife Service that implementation of the PM&E measures set forth in this Agreement will have a net positive effect on bull trout recovery in and adjacent to the Project Area.

1.3 Limitations. This Agreement establishes no principle or precedent with regard to any issue addressed in this Agreement or with regard to any Party's participation in any other pending or future licensing proceeding. Further, no Party to this Agreement shall be deemed to have approved, accepted, agreed to, or otherwise consented to any operation, management, valuation, or other principle underlying any of the matters covered by this Agreement, except as expressly provided in this Agreement and Appendix A. By entering into this Agreement, no Party shall be deemed to have made any admission or waived any contention of fact or law that it did make or could have made in the Relicensing. This Agreement shall not be offered in evidence or cited as precedent by any Party to this Agreement in any administrative or judicial litigation, arbitration, or other adjudicative proceeding, except in a proceeding to establish the existence of or to enforce or implement this Agreement. This Section 1.3 shall survive any termination of this Agreement.

1.4 Representations Regarding Consistency and Compliance with Statutory Obligations. By entering into this Agreement, the Governmental Parties represent that they believe their statutory and other legal obligations are, or can be, met through implementation of this Agreement and the Final Terms and Conditions. Nothing in this Agreement shall be construed to limit any government agency with jurisdiction directly related to the New License from complying with its obligations under applicable laws and regulations or from considering public comments received in any environmental review or regulatory process related to the Project in accordance with this Agreement. This Agreement shall not be interpreted to predetermine the outcome of any environmental or administrative review or appeal process.

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1.5 Conditions Precedent and Conditions Subsequent. The Parties' respective obligations to perform this Agreement are subject to conditions precedent and conditions subsequent, as more fully set forth in Section 4 below.

1.6 License Term. The Governmental Parties agree not to submit comments to FERC concerning the term of a New License. If the Government Parties submit comments or recommendations on the term of the New License in the Final Terms and Conditions submitted to FERC, the inconsistency shall be resolved pursuant to Sections 4.1 through 4.4 below.

1.7 Flow Terms Are Not State Water Rights. The terms "minimum flow," or "minimum discharge flows," related to PM&E Measures or 401 conditions, or any provisions relating to such terms in this Agreement are not intended to be, nor shall they be interpreted to imply, a state water right granted by the state of Idaho.

1.8 Reconciliation with FERC Terms and Conditions. The Governmental Parties recognize that FERC may include terms and conditions in the New License pursuant to the FPA. The Governmental Parties agree to recommend to FERC that all issues concerning water quality, fishery, wetlands, erosion and other natural resources within the jurisdiction of the Governmental Parties have been adequately addressed in this Settlement Agreement and will recommend that FERC not impose any conditions inconsistent with the Settlement Agreement in any project area within the jurisdiction of the Governmental Parties. In the event FERC disregards the Governmental Parties' recommendations and includes inconsistent terms in the New License in any project area within the jurisdiction of the Governmental Parties, then the Parties may individually or jointly petition FERC for a rehearing or pursue other available appeals. In the event that conditions in the New License duplicate or overlap the requirements of this Agreement and Appendix A, then the Parties will cooperate to avoid duplication of cost and effort. If the Parties are unable to agree on how such overlapping conditions should be accounted for in meeting the terms of this Agreement and Exhibit A, the Parties will follow the dispute resolution process in Sections 4.1 through 4.3 below.

### SECTION 2:

#### ACTIONS UPON EXECUTION OF THIS AGREEMENT

2.1 FERC Filings. Following the Effective Date, the Parties shall jointly file with FERC an explanatory statement along with a fully executed copy of this Agreement in accordance with FERC regulation 18 C.F.R. § 385.602. The Parties in the explanatory statement will include the requests, comments, and recommendations described in Sections 1.1., 1.2, and 1.8.

2.2 Permits. In accordance with this Agreement, Avista shall apply for and use reasonable efforts to obtain in a timely manner and in final form all required permits, licenses, authorizations, certifications, determinations, and other governmental approvals ("Permits") for purposes of implementing this Agreement and the New License. Nothing herein obligates Avista to obtain any Permits which are preempted by the Federal Power Act or prevents the Governmental Parties or their contractors from obtaining any Permits. The Parties shall cooperate during the permitting, environmental review, and implementation of this Agreement.

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Avista's failure to implement any action required by this Agreement or the Final Terms and Conditions because of delays in the issuance of permits, licenses, authorizations, certifications, or other governmental approvals shall be governed by the provisions in Section 6.3.

2.3 Communications with FERC and Other Government Agencies Before Order Issuing New License. Except as provided in Sections 1.1, 1.1.1, 1.1.2.,1.1.3, 1.2, 1.6, 1.8 and 2.1 above, or except as required to comply with applicable law, the Parties shall (1) be free to make statements of fact but shall otherwise make comments to FERC that are consistent with this Agreement; (2) make comments and respond to comments or responses to comments filed by them, to the extent any comments or responses are filed, with FERC and IDEQ in the context of the Relicensing and 401 Certification in a manner consistent with this Agreement; and (3) to the extent they participate in relevant regulatory proceedings, actively support this Agreement and incorporation of consistent terms into the 401 Certification and New License. If any Party advocates after the Effective Date, to FERC, or in any other forum, conditions to the New License or 401 Certification that are inconsistent with this Agreement or the conditions set forth in Appendix A, or argues for the deletion or omission of any conditions set forth in Appendix A from the New License, then any other Party may invoke the provisions in Sections 4.1 through 4.4.

### SECTION 3:

#### PROTECTION, MITIGATION AND ENHANCEMENT MEASURES ("PM&Es")

3.1 Protection, Mitigation, and Enhancement Measures. The Parties agree that, subject to public comment, the PM&Es for the New License shall be the conditions set forth in Appendix A hereto and that those PM&Es protect and enhance aquatic resources associated with the Project and mitigate for Project-related impacts on those resources and address Project impacts on water quality. The Parties agree that Avista is responsible for implementation of the PM&E Measures set forth in Appendix A and may satisfy such responsibility through the provision of funding to the Governmental Parties in accordance with this Agreement and Appendix A.

3.2 PM&E Funding. The Parties further agree that the annual costs to Avista to develop and implement PM&Es according to this Agreement shall not exceed \$350,000 annually ("cost caps"). The Parties agree that the cost caps set forth in Appendix A, for each PM&E measure, represent the limit of Avista's obligation for implementation of these PM&E Measures as incorporated into the conditions of the Final 401 Certification, exclusive of the administrative cost of Avista personnel time. Any costs associated with monitoring, obtaining any Permits, or conducting required studies to implement PM&E Measures will be included within the cost caps limit. However, monitoring specific to the minimum discharge plan below Post Falls Dam required in Section I of Appendix A and costs to implement any conditions imposed by FERC in the New License to address Section 4(e) of the FPA will not be included within the cost caps. In no event will Avista have any obligation to provide additional funding or resources to implement the terms of this Agreement.

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### SECTION 4:

#### COLLABORATION AND DISPUTE RESOLUTION PROCESS

4.1 Cooperation Among Parties. The Parties shall cooperate in the performance of this Agreement and compliance with related license articles. Among other things, the Parties shall cooperate in implementing the PM&E Measures, conducting studies, performing monitoring, and conducting all other activities related to the implementation of this Agreement and Appendix A.

4.2 Decision-Making Process. The Parties will attempt to conduct their business by consensus. When consensus cannot within a reasonable time be reached, the Parties will follow the procedures set forth below in Section 4.3.

4.3 Decision Rule in the Absence of Consensus. When consensus cannot be reached by the Parties on any issue regarding performance of this Agreement, the Parties will refer such issue to the appropriate policy maker designated by each Party. If the policy makers are unable to resolve the issue by consensus within thirty (30) days after referral to that group, each Party reserves all applicable legal rights to challenge the final decision concerning the disputed issue unless the Parties mutually agree to arbitrate the dispute or agree to a longer period of time to reach consensus. Avista need not follow these dispute resolution procedures prior to filing an administrative appeal if filing the appeal is necessary, due to time limits, to preserve Avista's legal rights to challenge the agency action.

4.4 Withdrawal from Agreement Prior to Order Issuing New License. If one or more of the events specified in Section 5.2 occurs, and the Parties are unable to resolve disputed issues using the procedures in Sections 4.1 through 4.3, then, any Party may withdraw from this Agreement by providing written notice to the other Parties.

### SECTION 5:

#### IMPLEMENTATION OF AGREEMENT

5.1 Parties Bound. The Parties shall be bound by this Agreement except that if a Party withdraws as allowed by Section 4.4 of this Agreement, that Party shall not be bound following such withdrawal except as specified in Section 1.3.

5.2 Resolution of Disputes Before Order Issuing New License. If any of the following events occur after the Effective Date and prior to FERC granting the New License:

- a. A Final 401 Certification for the Project is denied or issued with conditions inconsistent with Appendix A; or
- b. Final Terms and Conditions under FPA sections 10(a) or 10(j) are filed with FERC by a Party that are inconsistent with this Agreement or the conditions set forth in Appendix A; or

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- c. Comments or recommendations are filed with FERC by a Party that are inconsistent with this Agreement or the conditions set forth in Appendix A; or
- d. A Party encourages a non-Party to file Final Terms and Conditions under FPA sections 4(e), 18, 10(a) or 10(j), or other comments, measures or recommendations including under the ESA, that are inconsistent with this Agreement or the conditions set forth in Appendix A; or
- e. A Party petitions FERC or otherwise seeks to (i) impose additional provisions for environmental, cultural, public recreation, fishery, wildlife, land management, operational, and related measures, (ii) impose any provision inconsistent with the Agreement or the conditions set forth in Appendix A, (iii) change the Project boundaries, or otherwise breaches this Agreement,

then any Party may invoke the procedures in Sections 4.1 through 4.3. If the dispute is not resolved after following the procedures in Sections 4.1 through 4.3, then any party shall be free to pursue any legal or administrative challenge or process, including a challenge to any term or condition of a Final 401 Certification and may withdraw from this Agreement pursuant to Section 4.4. Nothing in this Agreement creates any cause of action or right of appeal or challenge not otherwise allowed under applicable law. In addition, nothing in this Agreement excuses Avista's obligation to comply with statutes of limitations or other requirements related to any legal or administrative appeal or challenge.

5.3 Issuance of Final 401 Certification Consistent with Appendix A. Avista agrees that if, after public participation, the Final 401 Certification for the Project is consistent with Appendix A and the Governmental Parties otherwise comply with Section 2.3 of this Agreement and none of the events listed in Section 5.2 occur, then Avista will not appeal or otherwise challenge such Final 401 Certification. Nothing herein affects the Parties' ability to exercise whatever legal rights they may have with respect to matters relating to implementation of the 401 Certification that cannot be resolved collaboratively pursuant to Sections 4.1 through 4.3 of this Agreement.

5.3.1 Change in Terms and Conditions During License Term. IDEQ shall not, during the term of the New License, attempt to amend its Final 401 Certification after issuance of the New License unless IDEQ discovers new information which was not reasonably ascertainable at the time of the Final 401 Certification regarding Project impacts that have a significant adverse effect on water quality not addressed in the Final 401 Certification. In addition, except as provided in Appendix A and this Agreement, the Governmental Parties may not seek to modify or add to the PM&E Measures or other obligations of Avista or seek to amend the New License pursuant to standard FERC reopener provisions, except: (A) as required by statutes enacted or amended after the date of the final order issuing the New License; or (B) if new information regarding Project impacts not known or understood as of the date of issuance of the New License reasonably demonstrates that the Agreement does not continue to satisfy Avista's obligations under Sections 1.1.1, or

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1.1.2, or any subsequently enacted or amended statute. Within a reasonable amount of time (a minimum of thirty (30) days) before seeking to amend the Final 401 Certification, PM&E measures, or other obligations of Avista or the New License, written notice shall be provided to all other Parties of the intent to seek such amendment. If, during the New License term (i) any Party seeks to change its Final Terms and Conditions applicable to Avista, including a change or amendment of the 401 Certification as allowed above, or (ii) any Party petitions FERC to change the terms of the New License, including any change to meet a requirement of a new statute, or seeks to change the Project Boundary, any Party may give notice that it believes such action or petition is inconsistent with this Agreement and may commence dispute resolution in accordance with Sections 4.1 through 4.3. For purposes of this Settlement Agreement, modified minimum discharge operations resulting from the process set forth in Appendix A, shall not be treated as an amendment, modification, or addition to the 401 Certification, PM&E measures, or other obligations of Avista.

5.3.2 Should Avista Fail To Perform License Terms. If Avista fails to perform any of the conditions of Appendix A of this Agreement that are included in the New License and is not excused by force majeure or by FERC, a Party may give Avista notice and an opportunity to cure within thirty (30) days of such notice. If Avista fails to cure the problem within that period, or if such failure is not curable within thirty (30) days and Avista has not commenced a cure within that period and diligently and in a timely manner completed such cure, any Party who objects to such failure to perform may give notice to the other Parties and commence the procedures set forth in Sections 4.1 through 4.3. In addition, the aggrieved Party or Parties may petition FERC to enforce such provision and, if unsuccessful, seek rehearing or appeal or, if and as appropriate, the remedies of mandamus or specific performance. The Parties reserve any remedies under applicable law to enforce the conditions contained in Appendix A of this Agreement not enforced by FERC.

5.3.3 Should Avista Fail To Perform Covenants of This Agreement Not Included in the New License. If Avista fails to perform any of the terms, conditions, measures, and obligations under this Agreement that are not included as terms in the New License and FERC has not prohibited Avista from so performing, any Party may give Avista notice of the failure and an opportunity to cure within thirty (30) days of such notice. If Avista fails to cure the problem within that period, or if such failure is not curable within thirty (30) days and Avista has not commenced a cure within that period and diligently and in a timely manner completed such cure, the Party may seek specific performance of this Agreement. The Parties reserve any remedies under applicable law to enforce the PM&E Measures contained in this Agreement.

5.3.4 Action by Third Party. If, during the terms of the New License, a third party successfully petitions FERC or obtains a court order modifying the operation of the Project in a manner that is inconsistent with this Agreement, then any Party who objects to such order may give notice to the other Parties and commence dispute resolution procedures set forth in Sections 4.1 through 4.3 of this Agreement to determine whether such inconsistency can be resolved by agreement of the Parties. In addition, the aggrieved Party or Parties may seek rehearing or appeal of such order. If, after pursuit of the dispute resolution or other proceedings, the order complained of remains in effect, or as modified is

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still inconsistent with this Agreement, any Party may exercise any available legal rights concerning the order.

5.3.5 Review of FERC Actions. Any Party may petition FERC for rehearing and may seek judicial review of any FERC act or omission, at or subsequent to the New License becoming final, that is inconsistent with this Agreement. If a Party has filed for rehearing or judicial review of any inconsistent action and the Parties subsequently agree unanimously to modify this Agreement to conform to the inconsistent action, the filing Party or Parties shall withdraw the rehearing request or request for judicial review, or recommend such withdrawal, as appropriate.

5.3.6 Review of Other Agency Actions Relating to Implementation of the 401 Certification. If a Governmental Party takes an action, other than those actions set forth in Section 5.3.1, during the implementation of the 401 Certification that is inconsistent with this Agreement, Avista may give notice and commence dispute resolution in accordance with Sections 4.1 through 4.3. If the issue is not resolved pursuant to the procedures set forth in Sections 4.1 through 4.3 and a Party pursues an administrative appeal or judicial review of any inconsistent action and the Parties subsequently agree to modify this Agreement to conform to the inconsistent action, the filing Party or Parties shall withdraw the appeal or request for judicial review, or recommend such withdrawal, as appropriate.

5.3.7 Escalation of Costs. Unless otherwise indicated, all costs or payment amounts specified in dollars shall be deemed to be stated as of the year 2008, and Avista shall escalate such sums as of January 1 of each following year (starting in January 2008) according to the following formula:

$$AD = D \times \frac{(NGDP)}{IGDP}$$

WHERE:

AD = Adjusted dollar amount as of January 1 of the year in which the adjustment is made.

D = Dollar amount prior to adjustment.

IGDP = GDP-IPD for the third quarter of the year before the previous adjustment date (or, in the case of the first adjustment, the third quarter of the year before the Effective Date).

NGDP = GDP-IPD for the third quarter of the year before the adjustment date.

“GDP-IPD” is the value published for the Gross Domestic Product Implicit Price Deflator by the U.S. Department of Commerce, Bureau of Economic Analysis in the publication Survey of Current Business, Table 7.1 (being on the basis of 1996 = 100), in the third month following the end of the applicable quarter. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted by the Parties. If the

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base year for GDP-IPD is changed or if publication of the index is discontinued, the Parties shall promptly make adjustments or, if necessary, select an appropriate alternative index to achieve the same economic effect. However, any annual adjustment under the terms of this section, regardless of the GDP-IDP, shall not exceed 6%, nor be less than 0%.

5.4 Amendment of Agreement. This Agreement may be amended at any time during the term of the New License with the unanimous agreement of all Parties. Any amendment of this Agreement shall be in writing and executed by all Parties. As appropriate, the Parties will submit a statement to FERC in support of the amendment.

5.5 Termination of Agreement. This Agreement may be terminated by mutual agreement of the Parties or by the withdrawal of a Party pursuant to Section 4.4.

### SECTION 6:

#### GENERAL PROVISIONS

6.1 No Third-Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to applicable law, this Agreement shall not create any right or interest in the public, or any member of the public, as a third-party beneficiary of this Agreement and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.

6.2 Successors and Assigns. This Agreement shall apply to and be binding on the Parties and their successors and approved assigns. No change in ownership of the Project or transfer of the existing or New License by Avista shall in any way modify or otherwise affect any other Party's interests, rights, responsibilities, or obligations under this Agreement. Unless prohibited by applicable law, Avista shall provide in any transaction for a change in ownership of the Project or transfer of the existing or New License that such new owner or owners shall be bound by and shall assume the rights and obligations of this Agreement upon completion of the change of ownership and approval by FERC of the license transfer or transfers. A transferring or assigning Party shall provide notice to the other Parties at least sixty (60) days prior to completing such transfer or assignment.

6.3 Failure to Perform Due to Force Majeure. No Party shall be liable to any other Party for breach of this Agreement nor shall any Governmental Party notify FERC that Avista is not in compliance with the conditions in Appendix A as a result of a failure to perform or for delay in performance of any provision of this Agreement if such performance is delayed or prevented by force majeure. The term "force majeure" means any cause reasonably beyond the affected Party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable, and without the fault or negligence of the affected Party. Force majeure may include, but is not limited to, natural events, labor or civil disruption, breakdown or failure of Project works, orders of any court or agency having jurisdiction of the Party's actions, delay in the New License becoming final, or delay in issuance of any required permit. Increased cost for the performance of any PM&E Measures or change in market conditions for the sale of electricity shall not be deemed to constitute force majeure, provided that Avista will not be obligated to perform



## Post Falls Settlement Agreement

measures in excess of the commitments specified in this Agreement. The Party whose performance is affected by force majeure shall notify the other Parties in writing within seven (7) days after becoming aware of any event that such affected Party contends constitutes force majeure. Such notice will identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, to resume performance of its obligations and give the other Parties written notice to that effect.

6.4 Governing Law. The New License and any other terms of this Agreement over which a federal agency has jurisdiction shall be governed, construed, and enforced in accordance with the statutory and regulatory authorities of such agency. This Agreement shall otherwise be governed and construed under the laws of the state of Idaho. By executing this Agreement, no state agency or officer is consenting to the jurisdiction of a federal court or agency unless such jurisdiction otherwise exists. All activities undertaken pursuant to this Agreement shall be in compliance with all applicable law.

6.5 No Partnership. Except as otherwise expressly set forth herein, this Agreement does not, and shall not be deemed to, make any Party the agent for or partner of any other Party.

6.6 Indemnification. Each Party shall, to the extent permitted by law, indemnify, defend and save harmless the other Party, its officers, agents, and employees from and against any and all liability, claims, damages, losses, expenses, actions, attorneys' fees and suits whatsoever caused by or arising out of the indemnifying party's negligent or wrongful performance, acts or omissions under this Agreement or the indemnifying party's failure to comply with any state or federal statute, law, regulation or rule; provided, however, that the Parties agree to and acknowledge the following:

i. IDEQ and IDFG are governmental entities and this Section 6.6 shall in no way or manner be construed so as to bind or obligate the State of Idaho to unlawfully expend funds beyond the term of any particular appropriation of funds by the State Legislature as may exist from time to time.

ii. IDEQ and IDFG are state governmental entities and are subject to state law restrictions concerning actions it may take to accept liability, including the Idaho Tort Claims Act, Idaho Code §§ 6-901, et seq.

iii. The Parties agree that an ultimate determination of liability is a precondition to payment of reasonable litigation expenses, including reasonable attorney fees.

6.7 Reference to Statutes or Regulations. Any reference in this Agreement to any federal or state statute or regulation shall be deemed to be a reference to such statute or regulation or successor statute or regulation in existence as of the date of the action.

## Post Falls Settlement Agreement

6.8 Notice. Except as otherwise provided in this Section 6.8, any notice required by this Agreement shall be written. It shall be sent by first-class mail or comparable method of distribution to all Parties. For the purpose of this Agreement, a notice shall be effective seven (7) days after the date on which it is mailed or otherwise distributed. When this Agreement requires notice in less than seven (7) days, notice shall be provided by telephone, facsimile, or electronic mail and shall be effective when provided. For the purpose of notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix B. The Parties shall provide notice of any change in the authorized representatives designated in Appendix B, Avista shall maintain the current distribution list of such representatives.

6.9 Paragraph Titles for Convenience Only. The titles for the paragraphs of this Agreement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this Agreement or the intentions of the Parties. Reference to a given section of this Agreement shall be deemed to include all subsections of that section.

6.10 Entire Agreement. This Agreement sets forth the entire agreement and process of the Parties with regard to the fishery, wildlife, terrestrial, and water quality measures and operational measures related to aquatic resources and water quality, including all PM&E Measures addressing these resources, relating to the relicensing of the Project.

### SECTION 7:

#### EXECUTION OF AGREEMENT

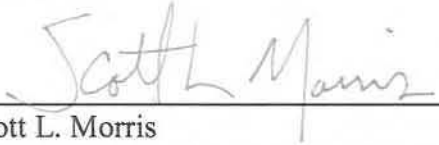
7.1 Signatory Authority. Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

7.2 Signing in Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

Post Falls Settlement Agreement

The Effective Date of this Agreement is the day that the last signatory executes the Agreement.

Avista:

A handwritten signature in cursive script, reading "Scott L. Morris", written over a horizontal line.


Scott L. Morris  
Chairman of the Board, President, and CEO  
Avista Corporation

A handwritten date "4-22-08" written in cursive script, positioned above a horizontal line.

date

Post Falls Settlement Agreement

Idaho Department of Fish and Game:

  
\_\_\_\_\_  
Cal Groen  
Director

4/22/08  
date

Post Falls Settlement Agreement

Idaho Department of Environmental Quality:

 Deputy Director for  
Toni Hardesty  
Director

4/22/08  
Date

## APPENDIX A TO POST FALLS SETTLEMENT AGREEMENT

April 21, 2008

Mr. Bruce Howard  
Director of Environmental Affairs  
Avista Utilities  
1411 East Mission  
PO Box 3727  
Spokane, Washington 99220-3727

***Re: 401 Certification for Avista Corporation's Post Falls Hydroelectric Development, FERC Project No. 12606, Kootenai and Benewah Counties, Idaho***

Dear Mr. Howard:

The Idaho Department of Environmental Quality (IDEQ) has completed its review of the application for water quality certification for a new Federal Energy Regulatory Commission (FERC) license (New License) for Avista Corporation's (Avista) Post Falls Hydroelectric Project, Project No. 12606 (Project), in Kootenai and Benewah Counties, Idaho. Discharges from this Project influence water quality in portions of the Spokane River. Conditions imposed in this certification also address water quality effects that the Project may have in Coeur d'Alene Lake ("Lake"), Coeur d'Alene River, St. Joe River, and St. Maries River in Idaho.

This letter will serve as certification by the State of Idaho pursuant to the provisions of Section 401 of the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 U.S.C. § 1341. If Avista complies with the terms and conditions set forth in this 401 certification, there is a reasonable assurance the operation of the Project will comply with the applicable requirements of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and the Idaho Water Quality Standards, IDAPA 58.01.02.

**THE FOLLOWING CONDITIONS ARE NECESSARY TO ENSURE COMPLIANCE WITH IDAHO WATER QUALITY STANDARDS:**

Mr. Bruce Howard

April 21, 2008

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I. LAKE LEVELS AND MINIMUM DISCHARGE FLOWS

A. Minimum Discharge Flows.

1. Avista's operational target or goal shall be to achieve and then maintain the Lake at full-pool elevation at or near 2,128 feet ("summer full-pool elevation") as early as practicable each year and maintain the Lake elevation at or near 2,128 feet until the Tuesday after Labor Day. After such time, Avista shall, using a down ramping rate of no more than 4-inches-per-hour, initiate draw down of the Lake to an elevation no lower than 2,120 feet 6 inches ("fall draw down"). Lake elevations are to be determined using the USGS gage 12415500 (Coeur d'Alene Lake at Coeur d'Alene, or "Tubbs Hill" gage).

2. Avista shall achieve and maintain the summer full-pool elevation and fall draw down in a manner that is consistent with the Upper Spokane River Rainbow Trout Spawning and Fry Emergence Monitoring and Protection Plan (2004).

3. After achieving the summer full-pool elevation, Avista shall maintain a minimum discharge of 600 cfs from the Project, as measured at the USGS gage 12419000 (Spokane River at Post Falls or "McGuire" gage).

4. Should the lake elevation fall below 2,127 feet 9 inches during July, August, or September prior to the Tuesday following Labor Day ("low flow conditions"), Avista shall reduce the discharge to 500 cfs from the Project unless operating for purposes of the monitoring program described in Section B.2. below.

5. Flows within 25 cfs of the required flows shall be considered in compliance with this condition.

B. Monitoring Plan Regarding Minimum Discharge.

1. Avista shall, after issuance of a New License, develop, in consultation with IDEQ, a Monitoring Plan that includes the elements described below. The Monitoring Plan shall be submitted to IDEQ for approval within six months after issuance of a New License. The purpose of the Monitoring Plan is to evaluate data and assumptions upon which the required discharge flows are based. The Monitoring Plan shall address the relationship between discharge flows and water temperature in the Spokane River. The Monitoring Plan shall provide for five (5) years of monitoring. The Monitoring Plan shall include a Quality Assurance Control Project Plan (QAPP). The QAPP shall include (a) appropriate protocols for flow and temperature measurements, (b)

flow monitoring conducted continually from July 1 through September 30 at the following locations, or at alternative locations agreed to by IDEQ and Avista: McGuire gage, Barker Road (USGS 12420050) and Trent Avenue Bridge area (USG 12421500 or USGS 12421000), and (c) a description of the manner in which Avista shall, in accordance with the requirements set forth in Section B.2., incrementally increase and monitor minimum discharges during low flow conditions. The QAPP shall be consistent with applicable Idaho water quality law. Upon approval, the Monitoring Plan shall be implemented in accordance with the QAPP for a period of five (5) years, unless IDEQ determines that five (5) full years of monitoring are not necessary.

2. In order to monitor the effects of alternative minimum discharges during low flow conditions when the reduction to 500 cfs would otherwise be required by Section I.A.4. of this certification, Avista shall, in accordance with the approved Monitoring Plan, incrementally increase and monitor flows up to 700 cfs during low flow conditions. Avista shall not, however, increase discharge flows above 600 cfs except upon prior notification to, and approval by, IDEQ.

C. Data Review Decision Making.

1. Avista shall provide all raw temperature and flow data collected to IDEQ as soon as practicable after September 30 each year. At the end of the five (5) years, or earlier, if monitoring is terminated by IDEQ, Avista shall submit a report of findings to IDEQ.

2. IDEQ intends to review the annual data and report of findings in coordination and consultation with the Idaho Department of Fish and Game (IDFG), Washington Department of Ecology, and Washington Department of Fish and Wildlife (WDFW). After such coordination and consultation, IDEQ shall proceed as follows:

a. Should IDEQ determine the data supports the minimum discharge operations required by Section I.A., Avista shall continue to operate the Project in accordance with Section I.A., except that Avista will no longer be required to implement the alternative minimum discharges in Section I.B.2. of this certification. Avista shall notify FERC of IDEQ's decision.

b. Should IDEQ determine that the minimum discharge operations set forth in Section I.A. require modification, IDEQ shall notify Avista of the required modification and Avista shall thereafter operate the Post Falls facility in



compliance with the required modified discharge operations. Avista shall also notify FERC of the modification in operations.

c. Should IDEQ determine that data is insufficient to make a determination regarding the minimum discharge operations, Avista shall extend the period of data collection until at least two (2) years of data under "low-flow" conditions (when the reduced minimum flow of 500 cfs is implemented) have been collected. Any additional data will be submitted to IDEQ as soon as practicable after September 30 each year. Within ninety (90) days of acquiring the two (2) years of such data, Avista shall submit a supplemental report to IDEQ. IDEQ shall review the supplemental report and data as provided in Section C.2. above and make a determination regarding minimum discharge operations. Avista shall notify FERC of IDEQ's decision.

## II. WATER QUALITY MONITORING

A. Avista shall monitor or provide funding to IDEQ for monitoring of water quality parameters in the Spokane River upstream of the Post Falls Dam, and in Coeur d'Alene Lake and any tributaries of Coeur d'Alene Lake. This monitoring will be conducted according to the "*Continued Monitoring of Water Quality Status and Trends in Coeur d'Alene Lake, Quality Assurance Project Plan* (DEQ/Coeur d'Alene Tribe 2007 et seq.) (QAPP) or any revisions to the QAPP and will be consistent with the water monitoring requirements recommended by FERC staff in the final Environmental Impact Statement for the Project issued July 2007. In the event FERC, in the New License, requires Avista to develop a water quality monitoring plan for FERC approval that duplicates the monitoring described herein, the funding provided by Avista herein will be applied towards development of said plan (whether developed by IDEQ or Avista). The funding may also be used for other monitoring consistent with the current or any revised Coeur d'Alene Lake Management Plan objectives, for the term of the New License. Expenditure of the funds on various monitoring projects will be governed by Section VIII.A. of this certification.

B. Avista shall make available \$50,000 annually for the term of the New License to implement the water quality monitoring described in Section II.A. of this certification. The \$50,000 shall be made available on or before July 1 of the first year of the New License, and on or before July 1 every year thereafter for the term of the New License. The funding provided by Avista shall be used to pay for work performed by IDEQ or any agreed-upon contractor to the state of Idaho, for the planning, implementing, or reporting components of this condition. Any funds not expended within one (1) year shall carry over and can be used in following years consistent with Section VIII.A. of the certification. Any funds carried over shall be in addition to the annual \$50,000 provided by Avista. The fact that funds have not been expended in one (1) year and are carried over does not diminish Avista's responsibility for providing \$50,000

annually for the life of the New License. Provided, however, funds which are carried over and not expended within five (5) years will no longer be available in accordance with section VIII. A. of the certification. The \$50,000 annual payment shall be adjusted in accordance with Section VIII.B. of this certification.

Avista's internal administrative costs to implement this condition shall be part of Avista's internal overall costs for license implementation and compliance. The funds described in this Section II.B. shall not be used to support Avista's internal administrative costs to implement this condition.

### III. WATER QUALITY IMPROVEMENT AND EROSION CONTROL

A. Avista shall develop and implement a Water Quality Improvement and Erosion Control Plan (Plan). The Plan shall include the following components:

1. **Water Quality Improvement and Erosion Control Plan.** Avista shall develop a Water Quality Improvement and Erosion Control Plan that identifies and prioritizes actions to protect and improve water quality associated with the Post Falls Project and protect beneficial uses. Avista shall include in the Water Quality Improvement and Erosion Control Plan site-specific erosion control actions. Consultation with stakeholders through the alternative licensing process (ALP) has provided guidance regarding potential locations and types of erosion control actions that may be included in the Plan. (Stoker, 2004). The current Coeur d'Alene Lake Management Plan, or any revisions to the Lake Management Plan, may also provide Avista with a set of potential actions that could be implemented to reduce sedimentation, reduce nutrient loading, or improve water quality and protect beneficial uses.

2. **Five-Year Plan:** The Plan shall describe prioritized measures to be implemented in the first five-year period following the issuance of the New License.

B. Within the first year after the New License becomes effective, Avista shall develop and submit to IDEQ for approval the Water Quality Improvement and Erosion Control Plan. Upon approval by IDEQ, Avista shall implement the Plan. Every five (5) years after the New License becomes effective and continuing for the term of the license, Avista shall update and revise the Plan to describe those measures to be implemented within the following five (5) years. The updated Plan shall be submitted to IDEQ for approval, and upon approval by IDEQ, shall be implemented by Avista. Avista shall consult with IDEQ annually regarding those measures to be carried out within the year. Implementation of the Plan and expenditure of funds for specific projects will be governed by Section VIII.A. of this certification.

C. Avista will prepare and submit to IDEQ a summary report every five (5) years documenting implementation of the measures described in the Water Quality Improvement and Erosion Control Plan. The report shall be submitted to IDEQ, within six (6) months of the end of each reporting period. The report will summarize the activities conducted under this condition during the preceding five (5) years and the results achieved, the overall results achieved to date (subsequent to first 5-year period), and the general nature of the activities that will be implemented during the next 5-year period.

D. By July 1<sup>st</sup> after the effective date of the New License, and every July 1<sup>st</sup> thereafter for the term of the New License, Avista shall make available \$75,000 to implement this condition. Any funds not expended within one (1) year shall carry over and can be used in the following year consistent with Section VIII.A. of this certification. Any funds carried over shall be in addition to the annual \$75,000 provided by Avista. The fact that funds have not been expended in one (1) year and are carried over does not diminish Avista's responsibility for providing \$75,000 annually for the term of the New License. Provided, however, that funds which are carried over and not expended within five (5) years shall no longer be available in accordance with Section VIII.A. of the certification. The funding provided by Avista shall be used to pay for work by Avista, IDEQ or their contractors for planning, implementing, or reporting components of this measure. The \$75,000 annual payment shall be adjusted in accordance with section VIII. B. of this certification.

Avista's internal administrative costs to implement this measure shall be part of Avista's internal costs for license implementation and compliance. The funds described in this Section III.B. shall not be used to support Avista's internal administrative costs to implement this condition.

#### IV. WETLAND AND RIPARIAN HABITAT PROTECTION AND ENHANCEMENT

A. Avista shall develop and implement a Wetland and Riparian Habitat Protection and Enhancement Plan (Plan). The Plan shall include the following components:

**1. Wetland and Riparian Habitat Protection and Enhancement Plan.**

Avista's Wetland and Riparian Habitat Protection and Enhancement Plan shall include actions to identify, evaluate, and undertake wetland and riparian habitat protection, restoration, creation, and enhancement projects. Preference will be given to sites where perpetual protection is possible; to existing wetlands associated with or in proximity to the Project, with an emphasis on those that cannot be easily replaced through mitigation; and to sites that are "in basin" and "in kind" to the Project-affected wetlands.

2. **Five-Year Plan.** The Plan shall set forth and describe a prioritized set of measures to be implemented in the first five-year (5) period following the effective date of the New License.

B. Within the first year after the effective date of the New License, Avista shall develop and submit the Plan to IDEQ for approval. IDEQ shall consult with IDFG regarding the Plan. Once approved by IDEQ, Avista shall implement the Plan. Every five (5) years beginning with the approval of the first Plan and continuing for the term of the New License, Avista shall update the Plan to describe those measures to be implemented within the next five (5) years. The updated Plan shall be submitted to IDEQ, for approval, and upon approval, shall be implemented by Avista. Avista shall consult with IDEQ and IDFG annually regarding those measures to be carried out within the year. Implementation of the Plan and expenditure of funds for specific projects will be governed by Section VIII.A. of this certification.

C. Avista will prepare and submit to IDEQ a summary report every five (5) years documenting implementation of the measures described in the Plan. The report shall be submitted to IDEQ within six (6) months of the end of each reporting period. The report will summarize the activities conducted under this condition during the preceding five (5) years and the results achieved, the overall results achieved to date (subsequent to first 5-year period), and the general nature of the activities that will be implemented during the next 5-year period.

D. By the first July 1<sup>st</sup> after the effective date of the New License, and every July 1 thereafter for the term of the New License, Avista shall make available \$75,000 to implement this condition. Any funds not expended within one (1) year shall carry over and can be used in the following year consistent with Section VIII.A. of this certification. Any funds carried over shall be in addition to the annual \$75,000 provided by Avista. The fact that funds have not been expended in one (1) year and are carried over does not diminish Avista's responsibility for providing \$75,000 annually for the life of the New License. Provided, however, that funds which are carried over and not expended within five (5) years shall no longer be available in accordance with Section VIII.A. of this certification. The funding provided by Avista shall be used to pay for work by Avista, IDEQ, or their contractors for the planning, implementing, or reporting components of this condition. The \$75,000 annual payment shall be adjusted in accordance with Section VIII.B. of this certification.

Avista's internal administrative costs to implement this measure shall be part of Avista's internal costs for license implementation and compliance. The funds described in this Section IV.D. shall not be used to support Avista's internal administrative costs to implement this condition.

V. POST FALLS PROJECT SPAWNING AND EMERGENCE FLOWS

A. Avista will comply with the Post Falls Project discharge levels as outlined in the *Upper Spokane River Rainbow Trout Spawning and Fry Emergence Protection Plan* (Plan) (Avista, 2004), or as this Plan may be revised through consultation with cooperating resource agencies and subject to FERC approval, if required. The Plan addresses Project impacts on the aquatic environment and was developed by Avista in consultation with IDFG, the United States Fish and Wildlife Service (USFWS), WDFW, and the Coeur d'Alene Tribe for the purpose of maintaining Project flow releases in the Spokane River to protect wild rainbow trout spawning and incubation.

VI. POST FALLS PROJECT RAMPING RATE

A. Avista shall maintain a maximum allowable per-hour discharge down-ramping rate at the Project that corresponds to no more than a 4-inch reduction per hour in downstream water levels at the USGS gage located on the Spokane River near Post Falls (USGS Gage No. 12419000). The required discharge down-ramping rates will be determined using USGS rating tables for this gage.

Exceptions: Post Falls Project discharge flow conditions and restrictions are required under normal operating conditions. Exceptions to these normal operating conditions include operating emergencies beyond the reasonable control of Avista, such as might occur due to safety concerns or unexpected electrical or mechanical failure. The flow conditions and restrictions may be revised on a temporary basis for other reasons if IDEQ approves the change in operations after consulting with the natural resource and/or public safety agencies, as it deems necessary.

VII. FISHERY PROTECTION AND ENHANCEMENT

A. Avista shall develop and implement a Fishery Protection and Enhancement Plan in accordance with Exhibit 1 of this certification.

VIII. FUNDING

A. Except as otherwise provided in this Section VIII., all funds to be provided by Avista described in this certification will be subject to the cost caps set forth in the certification and will remain in Avista's control until individual measures or activities required by this certification are implemented. Avista will fund individual measures and activities as they are

Mr. Bruce Howard

April 21, 2008

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implemented, in accordance with the plans required by this certification, and in coordination with IDEQ and, when applicable, IDFG. All funds required by this certification to carry out measures or activities include the costs of permitting such measures and undertaking any necessary studies and monitoring. If funds are made available for measures or activities conducted by IDEQ or IDFG, IDEQ or IDFG shall provide an accounting/invoice to Avista quarterly. Within 30 days of receipt, Avista shall reimburse IDEQ for the costs set forth in the accounting/invoice, up to the cost caps set forth in this certification. Funds not expended in a given year will remain available during the subsequent five (5) years and will not bear interest or be further escalated pursuant to Section VIII.B. below. Any funds provided by Avista pursuant to this certification or any funds carried over may be used to carry out and fund any measures set forth in Sections II, III, IV and VII of this certification. Funds carried over and not spent within five (5) years will no longer be available to implement the conditions of the certification.

B. Unless otherwise indicated, all costs or payment amounts specified in dollars shall be deemed to be stated as of the year the New License is issued. Annual funding required by this certification will be adjusted according to a formula agreed to by IDEQ, IDFG, and Avista.

C. In the event conditions in the New License require actions on the part of Avista that duplicate or overlap with the requirements of this certification, IDEQ and Avista shall cooperate to avoid duplication of effort and cost. IDEQ and Avista may agree that actions required by FERC in the New License also fulfill, in whole or in part, certain funding and other obligations required under this certification. In the event IDEQ agrees there is such overlap or duplication, Avista's obligations under this certification will be proportionately reduced and accounted for in the reports and plans required in this certification.

#### IX. OTHER PROVISIONS

IDEQ reserves the right to amend this certification as authorized under applicable law if it discovers new information not reasonably ascertainable regarding Project impacts that have a significant adverse effect on water quality which is not addressed in this 401 certification. Avista retains all rights under applicable law to challenge or appeal any attempt by IDEQ to amend this certification. This 401 certification and associated conditions may be appealed by submitting to IDEQ a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, within 35 days of the date of this letter.

Mr. Bruce Howard

April 21, 2008

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Sincerely,

Gwen P. Fransen

Regional Administrator

Idaho Department of Environmental Quality

rs/DH

cc: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission  
Barry Burnell, Water Program Administrator, IDEQ, Boise  
Douglas Conde, Deputy Attorney General, IDEQ, Boise  
Johnna Sandow, 401 Coordinator, IDEQ, Boise  
Chip Corsi, Regional Supervisor, IDFG, Coeur d'Alene  
Harriet Hensley, Deputy Attorney General, Natural Resources Division, Boise

**EXHIBIT 1**

A. Fishery Protection and Enhancement Plan. Avista shall develop and implement a Fishery Protection and Enhancement Plan ("Plan") that includes the following components:

1. The Plan shall identify and describe fish habitat protection and enhancement activities, fish population assessment and monitoring activities, and education/outreach actions that will be implemented over the term of the New License. Potential actions are outlined in the *Coeur d'Alene Lake Basin Bull Trout and Westslope Cutthroat Trout Protection, Mitigation, and Enhancement Implementation Plan* (Kleinschmidt, 2004) (2004 Plan). The 2004 Plan, developed by Avista, technical working groups, and fisheries managers describes a framework for Avista's participation in basin-wide efforts to improve the aquatic environment for bull trout and westslope cutthroat trout. The 2004 Plan provides for Avista to work with fishery resource managers to select and implement aquatic habitat restoration and restoration measures commensurate with project-related impacts on fishery and aquatic resources. Basin-wide activities include riparian habitat restoration and protection projects; acquisition or other long-term protection of private lands where aquatic habitat important to bull trout and westslope cutthroat trout exists; suppression of exotic species; collection of required or relevant baseline data; fish stocking programs to deflect recreational angling pressure away from wild populations of bull trout and westslope cutthroat trout; and strategies to prevent illegal harvest of wild rainbow trout from the Spokane River.

2. The Plan will identify and describe a prioritized set of measures to be implemented or funded in the first five-year (5) period after the New License becomes effective.

B. Within the first year after the New License becomes effective, Avista shall submit to IDFG, for approval, the Plan that includes the above-described components. IDFG shall consult with IDEQ and USFWS regarding the Plan. Upon approval by IDFG, Avista shall implement the Plan. Within the first five (5) years after the New License becomes effective, Avista will implement at least one enhancement project that improves bull trout habitat. Every five (5) years after the New License becomes effective, and continuing for the term of the New License, Avista shall update and revise the Plan to identify and describe actions to be carried out within the following five (5) years. The updated Plan shall be submitted to IDFG for approval. IDFG shall consult with IDEQ and USFWS before approving an updated Plan. Priority shall be given to projects that enhance benefits for multiple native salmonids. Upon approval of an updated Plan, it shall be implemented by Avista. Avista shall consult with IDFG, IDEQ, and USFWS annually regarding those activities to be carried out within the year.

C. Avista shall prepare and submit to IDFG and IDEQ a summary report every five (5) years documenting implementation of the measures described in the Plan. The report shall be submitted to IDEQ and IDFG within six (6) months following each reporting period. The report will summarize the activities conducted under this measure during the preceding five (5) years and the results achieved, the overall results achieved to date (subsequent to the first five (5) year period), and the general nature of the activities that will be implemented during the next five-year (5) period.



By the first July 1<sup>st</sup> after the New License becomes effective, and every July 1<sup>st</sup> thereafter for the term of the New License, Avista shall make available \$150,000 to implement this condition. Any funds not expended within one (1) year shall carry over and can be used in the following year consistent with Section VIII.A. of IDEQ's 401 certification. Any funds not expended for the specific measures outlined in the Plan may also be used in accordance with Section VIII.A. of IDEQ's 401 certification. Any funds carried over shall be in addition to the annual \$150,000 provided by Avista. The fact that funds have not been expended in one (1) year and are carried over does not diminish Avista's responsibility for providing \$150,000 annually for the term of the New License. Provided, however, that funds which are carried over and not expended within the subsequent five (5) years shall no longer be available in accordance with Section VIII.A. of IDEQ's 401 certification. The funding provided by Avista shall be used to pay for work by Avista, IDFG, or their contractors for the planning, implementing, or reporting components of this condition. Avista's internal administrative costs to implement this condition, shall be part of Avista's internal overall costs for license implementation and compliance, and will not be supported by the funding identified above. The \$150,000 annual payment shall be adjusted in accordance with Section VIII.A. of IDEQ's 401 certification.

APPENDIX B  
AUTHORIZED REPRESENTATIVES OF THE PARTIES

1. Avista: Director of Environmental Affairs, Avista Utilities, 1411 East Mission, PO Box 3727, Spokane, Washington 99220-3727
2. IDEQ: Regional Water Quality Manager, Idaho Department of Environmental Quality, Coeur d'Alene Regional Office, 2110 Ironwood Parkway, Coeur d'Alene, Idaho 83814
3. IDFG: Regional Supervisor, Idaho Department of Fish and Game, 2885 West Kathleen Avenue, Coeur d'Alene, Idaho 83815